Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/46415/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 13th June 2014	**On 17th June 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY

Between

MS JULIA DIONNE CHIN
(NO ANONMYITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Ahmed of Regents & Co Solicitors
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The appellant is a citizen of Jamaica born on 6th January 1969. She arrived in the UK on 30th September 2001 as a visitor and overstayed. She applied to remain in the UK on the basis of her relationship with Mr Ewan Natty, her unmarried partner and long residence. This application

was refused. As an overstayer she could not satisfy the requirements at paragraph 295D(iv) of the Immigration Rules, so the application was considered under the provisions in the Immigration Rules which reflect the UK's obligations under Article 8 ECHR at Appendix FM and paragraph 276 ADE. Whilst it was accepted that she had lived with her unmarried partner for more than two years and could satisfy other aspects of the Immigration Rules at Appendix FM to remain as his partner she could not satisfy the requirement at EX1 that there be insurmountable obstacles to their continuing their family life in Jamaica, particularly as it was said that the appellant's partner is Jamaican, lived there until 1998 and thus would be able to integrate in that country. The appellant was refused under paragraph 276ADE of the Immigration Rules because she had only lived in the UK for twelve years, and because she was found to have social, cultural and family ties with Jamaica having spent the majority of her life there. Her appeal against the decision was dismissed under the Immigration Rules but allowed under the general law relating to Article 8 ECHR by First-tier Tribunal Judge Chamberlain in a determination promulgated on the 17th March 2014.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Colyer on 28th April 2014 on the basis that it was arguable that the First-tier judge had erred in law in failing to give sufficient reasons why there were not insurmountable reasons to satisfy EX1 at paragraph 11 of her determination. Similarly there were no reasons for the finding that the appellant had not shown she had lost all ties with Jamaica.

3. The matter came before me to determine if the First-tier Tribunal had erred in law. I made some enquiries with the appellant to ensure that she understood that whether Judge Chamberlain had erred in law on this matter or not would make no difference to the type of leave to remain given by the Secretary of State. The same leave to remain would be given to those who qualified under the Article 8 ECHR provisions of the Immigration Rules as under Article 8 ECHR at large. It became clear however that this was an appeal pursued on a matter of principle rather than one which related to any practical outcome. There was no cross-appeal by the Secretary of State.

Submissions and Conclusions on Error of Law

4. Mr Wilding conceded that there was an error of law at paragraph 11 of the determination as Judge Chamberlain had uncharacteristically failed to give reasons for her decision that there were no insurmountable obstacles to family life taking place elsewhere. He said that perhaps Judge Chamberlain had been confused by submissions regarding the case of Sabir (Appendix FM- EX.1 not free standing) [2014] UKUT 00063, and had mistakenly thought that the facts of the appellant's case did not bring it within EX1 so there was no need to give reasons.

5. In the circumstances I told Mr Ahmed that I was satisfied that Judge Chamberlain had erred in law in failing to give any reasons for her conclusion at paragraph 11 of her determination that there were no insurmountable obstacles to the appellant and her partner, Mr Natty, having family life in Jamaica particularly in the light of her factual findings that led to her conclusion that the appellant's removal would be a disproportionate breach of her Article 8 ECHR rights. In the light of R (on the application of Nagre) v SSHD [2013] EWHC 720, for instance at paragraph 42, the two tests ought to have reached the same conclusion as this was a case involving an appellant who had precarious immigration status and whose relationship developed when this was the case. Further Judge Chamberlain had also given no reasons for her statement that the appellant had not shown she had lost all ties with Jamaica, which was also at odds with her subsequent factual findings.

6. I therefore set aside the decision of Judge Chamberlain that there appellant could not succeed under Appendix FM of the Immigration Rules due to failure to show insurmountable obstacles to her family life taking place in Jamaica, but preserved her factual findings which were not challenged by any of the parties.

Submissions Re-making

7. Mr Wilding said in the light of Judge Chamberlain's findings about the degree of difficulty of relocation and the lack of ties the appellant and her partner have with Jamaica, which had not been challenged by the Secretary of State, he accepted that it would be appropriate to find that the appellant met the insurmountable obstacles test.

8. I told Mr Ahmed that he did not need to make any further submissions as I agreed with Mr Wilding, and would remake the decision finding that there were insurmountable obstacles to the appellant's family life taking place in Jamaica, and thus that she qualified for leave to remain under Article 8 ECHR as embodied in the Immigration Rules at Appendix FM.

Conclusions: Re-making

9. To satisfy the test that there are insurmountable obstacles to family life between the appellant and Mr Natty taking place outside of the UK it is necessary to show that there would not be a practical possibility of relocation, see paragraph 42 of Nagre. This is not a test which literally requires obstacles that are impossible to surmount as that would be too stringent an approach, see MF (Nigeria) v SSHD [2013] EWCA Civ 1192.

10. The findings in the determination of Judge Chamberlain can be summarised as follows. That neither the appellant nor Mr Natty have any close family living in Jamaica; that the appellant has not returned to Jamaica since she entered the UK twelve years ago and Mr Natty has not been there since 1996 (for 18 years); that neither Mr Natty nor the

appellant has a property in Jamaica and they would have no support in that country; that the appellant is depressed; that she has an unusually close relationship with her adult son, going beyond normal emotional ties and which is rightly seen as a family life relationship, who is a British citizen and with her grandson, who is also a British citizen, whom she sees up to four times a week (who in turn cannot relocate to Jamaica as the appellant's grandson lives in the UK with his mother and all these people could not be expected to go to that country); and that Mr Natty is a British citizen who has work and established himself here, and who could not reasonably be expected to leave the UK.

11. I find that in the light of these findings that there was no practical possibility of the appellant's family life with Mr Natty taking place in Jamaica, and thus that she was able to satisfy the test that there were insurmountable obstacles to family life with her partner continuing outside the UK. She was therefore able to satisfy EX.1 (b) as the Secretary of State had rightly accepted that she had a genuine and subsisting relationship with Nr Natty who is a British citizen. As the other relevant aspects of Appendix FM were accepted as being satisfied by the Secretary of State, the appellant therefore qualifies for leave to remain on the basis of her family life under this provision.

Decision

12. The decision of the First-tier Tribunal involved the making of an error on a point of law.

13. The decision of the First-tier Tribunal that the appellant failed in her appeal under Appendix FM is set aside.

14. The decision is re-made allowing the appeal under the Article 8 ECHR aspects of Appendix FM of the Immigration Rules as set out above.

Deputy Upper Tribunal Judge Lindsley
16th June 2014